IBRAHIM ISMAIL & ANOR

v.

HASNAH PUTEH IMAT & ANOR AND ANOTHER APPEAL

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
TENGKU BAHARUDDIN SHAH JCA
ZALEHA ZAHARI J
[CIVIL APPEAL NOS: A-04-15-1999 & A-04-27-1999]
1 NOVEMBER 2003

CIVIL LAW ACT: *Damages - Running-down action - Multiplier - Appeal against High Court's decision to reduce multiplier - Whether multiplier not to be reduced below 16 as prescribed by ss. 7 and 28A CLA 1956 - Whether majority decision in Chan Chin Ming v. Lim Yoke Eng not to be followed*

DAMAGES: *Quantum - Multiplier - Appeal against High Court's decision to reduce multiplier - Whether multiplier not to be reduced below 16 as prescribed by ss. 7 and 28A Civil Law Act 1956 - Whether majority decision in Chan Chin Ming v. Lim Yoke Eng not to be followed*

DAMAGES: *Quantum - Damages for bereavement - Appeal against High Court's failure to reduce damages despite a finding of contributory negligence - Whether High Court erred in failing to do so*

There were two appeals before the court that stemmed from unconnected running down actions. Civil Appeal No. A-04-15-1999 was a claim for damages in a fatal accident and the appeal was against the failure of the lower courts to reduce damages for bereavement despite a finding of contributory negligence. There was also a cross appeal on the High Court's decision to reverse the decision of the sessions court in which the High Court reduced the multiplier of 16 that was applied by the sessions court under s. 7(3)(iv)(d) of the Civil Law Act 1956 ('CLA'). Civil Appeal No. A-04-27-1999 was a claim for damages for personal injury and the appeal was against the High Court's decision to reduce the multiplier of 16 that was applied by the sessions court under s. 28A(2)(d)(i) CLA.

The main issue was whether the High Court in both actions had the authority to reduce the multiplier below 16 as prescribed by ss. 7 and 28A CLA based on the Supreme Court case of *Chan Chin Ming v. Lim Yoke Eng.*

Held:
Per Gopal Sri Ram JCA

[1] The majority in the Supreme Court case of *Chan Chin Ming* was wrong and failed to apply the appropriate guide to statutory interpretation. The majority ought to have addressed the object or purpose of the amendments introduced by Parliament by way of ss. 7(3) and 28A CLA. Parliament's purpose was to address the very high award of damages for personal injuries and death and so fixed a formula for the multiplier. When a statute lays down a specific code or formula to meet a particular mischief of the common law, the courts are not at liberty to continue to apply the common law in disregard of the statute. It is this very principle that the majority in *Chan Chin Ming* breached when purporting to interfere with the pre-determined statutory formula. Further, the language of the statute is imperative. It says that "the number of years' purchase shall be 16". The mandatory tenor of this phrase employed by Parliament to convey its message excludes any pretended exercise of judicial power to substitute some other multiplier for that intended. As such, the dissenting view in *Chan Chin Ming* should be adopted. (pp 803 d, 804 g, 805 a, f & 806 b-d)

[2] The case of *Chan Chin Ming* was decided before the establishment of this court. It was decided at a point of time when the High Court had original jurisdiction over personal injury and fatal accident claims. Appeals were preferred to the Supreme Court that stood at the apex of the judicature. That is not the case today. All personal injury and fatal accident claims are now solely within the jurisdiction of the subordinate courts. Appeals are to the High Court and finally to this court. This court now stands at the apex in respect of the present claims. If a decision and more so a majority decision of the former Supreme Court is obviously wrong, then it is this court's duty to state so especially when it results in an injustice to the party concerned. (pp 807 g-h & 808 a)

[3] The effect of a finding of contributory negligence entitles a defendant to a proportionate reduction of the damages awarded to a plaintiff. Therefore, in Civil Appeal No. A-04-15-1999, the courts below were plainly wrong in failing to reduce the damages concerned. As for the cross-appeal, the sessions court had rightfully applied the multiplier of 16 as prescribed by s. 7(3)(iv)(d) CLA. The majority in *Chan Chin Ming* did not state that there must be a reduction of the multiplier in every case but that despite the imperative statutory direction it was still possible in a given case for

a court to substitute a multiplier of less than 16. Therefore, there was no duty on the High Court to reverse the decision of the sessions court in any event and it would not have infringed *stare decisis* if it had declined interference. As for Civil Appeal No. A-04-27-1999, the High Court should not have also reduced the multiplier of 16 as prescribed by s. 28A(2)(d)(i) CLA. (pp 808 e-h & 809 a-b)

[4] When calculating loss of dependency under s. 7 or loss of future earnings under s. 28A CLA, the prescribed statutory multiplier is to be applied directly. Resort to the annuity tables previously used is no longer permissible. (p 809 c-d)

[Appeals allowed.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Terdapat dua rayuan di hadapan mahkamah yang berasal dari tuntutan kemalangan jalanraya yang tidak berkaitan antara satu sama lain. Rayuan Sivil No. A-04-15-1999 adalah tuntutan untuk gantirugi dalam kemalangan maut dan rayuan adalah terhadap kegagalan mahkamah rendah untuk mengurangkan gantirugi bagi kedukacitaan walaupun wujud kecuaian sumbangan. Terdapat juga rayuan balas terhadap keputusan Mahkamah Tinggi untuk mengakas keputusan mahkamah sesyen di mana Mahkamah Tinggi telah mengurangkan pendarab 16 yang digunapakai oleh mahkamah sesyen di bawah s. 7(3)(iv)(d) Akta Undang-Undang Sivil 1956 ('CLA'). Rayuan Sivil No. A-04-27-1999 adalah tuntutan gantirugi bagi kecederaan diri dan rayuan adalah terhadap keputusan Mahkamah Tinggi mengurangkan pendarab 16 yang digunapakai oleh mahkamah sesyen di bawah s. 28A(2)(d)(i) CLA.

Isu utama adalah sama ada Mahkamah Tinggi dalam kedua-dua tindakan mempunyai kuasa untuk mengurangkan pendarab 16 sebagaimana yang dianjur oleh ss. 7 dan 28A CLA berdasarkan kes Mahkamah Agong *Chan Chin Ming v. Lim Yoke Eng.*

Diputuskan:
Oleh Gopal Sri Ram HMR

[1] Majoriti dalam kes Mahkamah Agong *Chan Chin Ming* silap dan gagal untuk menggunapakai panduan yang wajar dalam pentafsiran statut. Majoriti sepatutnya mempertimbang objek atau tujuan pindaan-pindaan yang diperkenalkan oleh Parlimen melalui ss. 7(3) dan 28A CLA. Tujuan Parlimen adalah untuk menumpukan perhatian kepada award yang sangat tinggi yang diberikan untuk kecederaan diri dan kematian dan kerana itu telah menetapkan formula bagi pendarab. Apabila sesuatu statut menetapkan

suatu kod tertentu atau formula untuk mengendalikan satu keburukan pada undang-undang awam, mahkamah tidaklah bebas untuk terus menerus memakai undang-undang awam dan mengetepikan statut. Inilah prinsip yang dilanggari oleh majoriti dalam *Chan Chin Ming* bila ia mengganggu formula statutori yang sudah ditetapkan. Tambahan lagi, bahasa yang digunakan oleh statut adalah imperatif. Ia menyatakan bahawa "jumlah tahun yang dibeli adalah 16". Bentuk ungkapan mandatori yang digunakan oleh Parlimen untuk menyampaikan mesejnya ini mengetepikan sebarang percubaan untuk melaksanakan kuasa kehakiman bagi mengganti pendarab yang dimaksudkan dengan pendarab-pendarab lain.

[2] Kes *Chan Chin Ming* diputuskan sebelum mahkamah ini ditubuhkan. Ia diputuskan semasa Mahkamah Tinggi mempunyai bidang kuasa asal terhadap tuntutan-tuntutan kecederaan diri dan kemalangan maut. Rayuan-rayuan dikemukakan ke Mahkamah Agong yang berada di puncak kehakiman. Sekarang keadaannya sudah berlainan. Semua tuntutan-tuntutan kecederaan diri dan kemalangan maut kini termasuk dalam bidang kuasa mahkamah-mahkamah rendah sepenuhnya. Rayuan-rayuan adalah ke Mahkamah Tinggi dan akhirnya ke mahkamah ini. Mahkamah ini kini berada dipuncak berhubung tuntutan-tuntutan di sini. Sekiranya satu keputusan dan lebih-lebih lagi satu keputusan majoriti Mahkamah Agong dahulu jelas salah, maka ianya menjadi tanggungjawab mahkamah ini untuk menyatakan demikian apa lagi apabila ia menyebabkan ketidakadilan kepada pihak yang berkenaan.

[3] Kesan dapatan kecuaian sumbangan ialah ia memberi hak kepada seseorang defendan untuk mendapat pengurangan sewajarnya pada jumlah gantirugi yang diawardkan. Oleh itu, dalam Rayuan Sivil No. A-04-15-1999, mahkamah-mahkamah di bawah jelas silap apabila gagal mengurangkan gantirugi yang berkaitan. Bagi rayuan balas, mahkamah sesyen telah dengan betulnya memakai pendarab 16 seperti yang ditetapkan oleh s. 7(3)(iv)(d) CLA. Majoriti dalam *Chan Chin Ming* tidak menyatakan bahawa harus ada pengurangan pendarab dalam setiap kes tetapi bahawa walaupun dengan arahan statutori yang imperatif ianya masih mungkin, dalam kes-kes tertentu, untuk mahkamah menggunakan pendarab yang kurang dari 16. Oleh itu, tidak ada keperluan bagi Mahkamah Tinggi untuk mengakas keputusan mahkamah sesyen dalam apa keadaan sekalipun dan ia tidak melanggari *stare decisis* jika ia enggan campur tangan. Bagi Rayuan Sivil A-04-27-1999, Mahkamah Tinggi juga tidak seharusnya mengurangkan pendarab 16 sepertimana yang ditetapkan oleh s. 28A(2)(d)(i) CLA.

[4] Apabila mengira kehilangan tanggungan di bawah s. 7 atau kehilangan pendapatan akan datang di bawah s. 28A CLA, pendarab yang ditetapkan oleh statut hendaklah digunapakai secara terus. Menggunakan jadual anuiti seperti dahulu tidak lagi dibenarkan.

Rayuan-rayuan dibenarkan.]

Case(s) referred to:
Bank of England v. Vagliano Bros [1891] AC 107 ***(refd)***
Chan Boon Fatt v. Lembaga Kemajuan Negeri Pahang [1983] 1 MLJ 89 ***(refd)***
Chan Chin Ming v. Lim Yoke Eng [1994] 3 CLJ 687 SC ***(not foll)***
Great Peace Shipping v. Tsalvliris (International) Ltd [2002] 4 All ER 689 ***(refd)***
Hum Peng Sin v. Lim Lai Hoon [2001] 4 CLJ 185 CA ***(refd)***
Marappan & Anor v. Siti Rahmah Ibrahim [1990] 1 CLJ 32; [1990] 1 CLJ (Rep) 174 SC ***(refd)***
Societie Banque v. Girdhari AIR [1940] PC 90 ***(refd)***
Solle v. Butcher [1949] 2 All ER 1107 ***(refd)***
Takong Tabari v. Government of Sarawak & Ors [1998] 4 CLJ 589 CA ***(refd)***
Tan Kheng Kuan v. Lim Cheng Teik [1965] 1 MLJ 116 ***(refd)***
Vacher & Sons Ltd v. London Society of Compositors [1913] AC 107 ***(refd)***
Yang Salbiah & Anor v. Jamil Harun [1981] 1 MLJ 292 ***(refd)***
Young v. Bristol Aeroplane Co Ltd [1944] 2 All ER 293 ***(refd)***

Legislation referred to:
Civil Law Act 1956, ss. 7(3)(iv)(d), 28A(2)(d)(i)

(Civil Appeal No: A-04-15-1999)
For the appellants - VK Dasaratharaj; M/s VP Nathan & Partners
For the respondents - Baldev Singh; M/s Syarikat Baldev Bhar

(Civil Appeal No: A-04-15-1999)
For the appellants - Harbans Singh (Dalgit Singh); M/s Gurdev, Dalgit, Su & Co
For the respondents - K Selvanayagam; M/s L Fernandez & Co

[Appeal from Sessions Court, Taiping; Civil Suit No: 53-157-93, Civil Appeal No: 12-6-1995(T) & High Court Ipoh, Civil Appeal No: 12-65-98]

Reported by Usha Thiagarajah

JUDGMENT

Gopal Sri Ram JCA:
These two appeals came up before us on the same list. Their facts are unconnected. But they have a common; almost identical point of law. It has to do with whether a court in a running down action, whether resulting in death or personal injury has authority to reduce the multiplier below the limit prescribed by the ss. 7 and 28A respectively of the Civil Law Act 1956. Section

7 has to do with the damages recoverable in a fatal accident claim. Section 28A deals with damages recoverable for the loss of future earnings in a personal injuries claim. It is important to reproduce the relevant portion of each of these sections.

Section (7)(3) in so far as is material reads:

> The damages which the party who shall be liable under subsection (1) to pay to the party for whom and for whose benefit the action is brought shall, subject to this section, be such as will compensate the party for whom and for whose benefit the action is brought for any loss of support suffered together with any reasonable expenses incurred as a result of the wrongful act, neglect or default of the party liable under subsection (1).
>
> Provided that:
>
> (iv) in assessing the loss of earnings in respect of any period after the death of a person where such earnings provide for or contribute to the damages under this section the Court shall:
>
> (a) take into account that where the person deceased has attained the age of fifty five years at the time of his death, his loss of earnings for any period after his death shall not be taken into consideration; and in the case of any other person deceased, his loss of earnings for any period after his death shall be taken into consideration if it is proved or admitted that the person deceased was in good health but for the injury that caused his death and was receiving earnings by his own labour or other gainful activity prior to his death:
>
> (b) take into account only the amount relating to the earnings as aforesaid and the Court shall not take into account any prospect of the earnings as aforesaid being increased at any period after the person's death;
>
> (c) take into account any diminution of any such amount as aforesaid by such sum as is proved or admitted to be the living expenses of the person deceased at the time of his death;
>
> (d) take into account that in the case of a person who was of the age of thirty years and below at the time of his death, the number of years' purchase shall be 16; and in the case of any other person who was of the age range extending between thirty one years and fifty four years at the time of his death, the number of years' purchase shall be calculated by using the figure 55, minus the age of the person at the time of death and dividing the remainder by the figure 2.

Section 28A(2)(d) reads as follows:

> (2)(d) in assessing damages for loss of future earnings the court shall take into account that:
>
> (i) in the case of a person who was of the age of thirty years or below at the time when he was injured, the number of years' purchase shall be 16; and
>
> (ii) in the case of any other person who was of the age range extending between thirty one years and fifty four years at the time when he was injured, the number of years' purchase shall be calculated by using the figure 55, minus the age of the person at the time when he was injured and dividing the remainder by the figure 2.

We emphasise that both ss. 7 and 28A use the phrase "shall be 16" when fixing the multiplier. Can a court reduce this further, to say, 10 years? A majority of the Supreme Court in *Chan Chin Ming v. Lim Yoke Eng* [1994] 3 CLJ 687 answered that question in the affirmative. But Edgar Joseph Jr. SCJ, a most learned judge whose judgments are entitled to great respect, registered a powerful dissent. In our considered judgment, the majority in that case were wrong. It is the dissent that states the law correctly. We will now state the reasons for our conclusion.

Chan Chin Ming was a case where the victim of the road accident died. It was therefore a case that fell under s. 7. The deceased in that case was 25 years at the date of the accident. He was unmarried. His mother brought a claim for loss of support. At the trial, the defendants conceded that using the statutory formula set out in s. 7(3), a multiplier of 16 representing the years of purchase had to be applied. On appeal by the defendant on quite another point (not relevant here) a majority of the Supreme Court treated the concession as an erroneous admission on a point of law. Relying on the authority of *Societie Banque v. Girdhari* AIR [1940] PC 90, it took the view that it was not bound by such an admission. It then went on and reduced the statutory multiplier from 16 to 7.

Peh Swee Chin SCJ (with whom Dzaiddin SCJ agreed) gave the following reasons for his decision:

> Having regard to the state of the general system of the law before the coming into force of sub-para (d) on 1 October 1984, sub-para (d) seems to be tailor-made for a claim by a spouse and children as dependants in respect of a deceased spouse, because under the general system of law, both before and after the enactment of sub-para (d), the duration of a claim for loss of support is usually as long as the deceased's loss of earnings which would have been earned had the deceased lived.

On the other hand, the state of the general system of law relating to a parent's claim as a dependant for loss of support in respect of an unmarried child before the enactment of sub-para (d) was that such loss of support would either cease or be reduced considerably on the almost invariable contingency of subsequent marriage of such unmarried child. If the learned judge was right, it would mean that this aspect of the law was swept away or changed.

There is one important principle of statutory interpretation which has been applied repeatedly over the years. It is this, that it is in the highest degree improbable that Parliament would depart from the general system of law without expressing its intention with irresistible clearness. I find such clearness missing. To give an example, Britain's Courts of Judicature Act 1873 *(sic)* provided that an injunction might be granted in all cases in which the court considered it 'just and convenient', it was held by the House of Lords in *Beswick v. Beswick* [1968] AC 58 to the effect that such general words would still mean that such injunction might be granted only in the usual infringement of recognized legal or equitable right. In other words, it is a fairly strong presumption against alteration in the law except with such irresistible clearness expressed.

I do not think it will come to this that arguments on this question of interpretation are evenly balanced, and if it were so, I would agree also 'that interpretation should be chosen which involves the least alteration of the existing law', per Lord Reid in *George Wimpey & Co Ltd v. British Overseas Airways Corp* [1955] AC 169 at p 191.

In the result, I am unable to agree with the view of the learned trial judge that sub-para (d) (of section 7(3) of the Act) applied to the claim in the instant case, ie the claim of a parent as dependant for loss of support in respect of a deceased unmarried child.

I, therefore, agree with the contention of the learned counsel for the defendants that the number of years' purchase should be reduced and I hereby reduce it to seven years, after taking into account the contingencies and circumstances in this case.

With respect, the majority failed to apply the appropriate guide to statutory interpretation and hence fell into error. What the majority addressed was the practice of making multiplier deductions prevalent in respect of dependency claims made by parents prior to the amendments. But the correct position is that there was no mandatory rule for deductions of the extent referred to by the majority. And more importantly, this was not the target of parliamentary intervention.

In our respectful view, the majority ought to have addressed the object or purpose of the amendments introduced by Parliament by way of ss. 7(3) and 28A. Had it done so, it would have discovered the mischief that Parliament was targeting for cure.

Now, it is common knowledge that Parliament's purpose was to address the very high award of damages for personal injuries and death. This resulted from three causes. First, the application of a flexible multiplier based on the facts and circumstances of each case. So, one could get a multiplier in excess of 16 years for a plaintiff or deceased who was below the age of majority. Second, the admission of an award for "lost years". As a result awards for loss of future earnings were frequently handed down in favour of non-employed injured plaintiffs or the estate of deceased victims. Very young children received huge awards based on their future prospects. In *Yang Salbiah & Anor v. Jamil bin Harun* [1981] 1 MLJ 292, for example, a seven year old girl who had become vegetative was awarded a sum on excess of RM30,000 for loss of future earnings based on a multiplier of 25 years purchase. Again, in *Chan Boon Fatt v. Lembaga Kemajuan Negeri Pahang* [1983] 1 MLJ 89, the dependants of a youth who was killed in an accident just as he was about to enter university were awarded RM15,000 as loss of dependency for the lost years on a multiplier of five years purchase based on an predicted income he never earned. Third, a person who had attained or exceeded the age of 55 years could claim for loss of future earnings. Thus, in *Tan Kheng Kuan v. Lim Cheng Teik* [1965] 1 MLJ 116 a 56 year old plaintiff who was working as a trishaw rider was awarded loss of future earnings. To emphasise, it is to prevent these types of awards that Parliament acted. That is why you find the fixed formula for the multiplier in the amendments.

It is a cardinal guide of statutory interpretation that when a statute lays down a specific code or formula to meet a particular mischief of the common law, it is not open to the courts to treat themselves as at liberty to continue to apply the common law in disregard of statute. The point was made in as plain language as can be by Lord Herschell in *Bank of England v. Vagliano Bros* [1891] AC 107 (at p. 144):

> I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view.

> If a statute, intended to embody in a code a particular branch of the law, is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, ...

It is this very principle that the majority in *Chan Chin Ming* breached when purporting to interfere with the pre-determined statutory formula applicable in the calculation of loss of earnings in dependency and personal injury claims. With great respect, the majority in *Chan Chin Ming* were exercising legislative and not interpretive jurisdiction.

There is a further point that the majority in *Chan Chin Ming* overlooked. The language of the statute is imperative. It says that "the number of years' purchase shall be 16". The mandatory tenor of the phrase employed by Parliament to convey its message excludes any pretended exercise of judicial power to substitute some other multiplier for that intended. The result may be unfair to insurers of vehicles. But that is irrelevant. As Lord Macnaghten said in *Vacher & Sons Ltd v. London Society of Compositors* [1913] AC 107, 118:

> Some people may think the policy of the Act unwise and even dangerous to the community. Some may think it at variance with principles which have long been held sacred. But a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. **The duty of the court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction.** It is, I apprehend, as unwise as it is unprofitable to cavil at the policy of an Act of Parliament, or to pass a covert censure on the Legislature. (emphasis added.)

These are some of the matters that led Edgar Joseph SCJ to enter a powerful dissent in these terms:

> I regret I have to part company with the majority of the members of this court and say that I cannot accede to the submission of counsel for the defendants regarding this part of the case as, to do so, would be to fly in the face of the mandatory provisions of proviso (d) to s. 7(3)(iv) of the Act, which fixes the multiplier at 16 years in cases such as the present.
>
> To my mind, it is manifestly clear, that in enacting the detailed provisions of proviso (d) to s. 7(3)(iv), Parliament had intended to take away the discretion of the court to select the appropriate multiplier, in assessing loss of earnings of a deceased person in respect of any period after his death, for purposes of a claim for loss of support under s. 7(1).

If counsel for the defendants were correct in his contentions, regarding this part of the case, then the court could also, in an appropriate case, in the exercise of its discretion:

(1) in the case of a deceased person of the age of 30 years and below, increase the multiplier beyond 16 years; or

(2) in the case of a deceased person of the age range extending between 31 years and 54 years, ignore the statutory formula provided and select an appropriate multiplier; or

(3) in the case of a deceased person of the age of 55 years and above, select an appropriate multiplier, when assessing loss of earnings in respect of the period after the death, although proviso (d) impliedly debars the court altogether from making any such award.

In other words, the effect of counsel for the defendants' submissions, if upheld, would mean that the court could, in any of the above cases, rewrite the statute, or brush aside explicit statutory provisions and select, in the exercise of its discretion, a suitable multiplier. This proposition is, in my view, quite untenable, and has only to be stated to be rejected, bearing in mind that when a question of statutory interpretation arises, the duty of the court is simply to give effect to the will of Parliament as expressed in the law.

We gratefully adopt in entirety the views expressed by that very learned judge.

Our attention was drawn to in *Takong Tabari v. Government of Sarawak & Ors* [1998] 4 CLJ 589 where this court applied the majority judgment in *Chan Chin Ming.* A careful reading of the judgment in the *Takong Tabari* case makes it clear that no argument as to the correctness of the decision in *Chan Chin Ming* was ever addressed to this court. That is not the case here. In the instant appeals counsel before us mounted a frontal attack on correctness of the majority judgment in *Chan Chin Ming*. We therefore merely happen to be more fortunate than the court in *Takong Tabari* to deal with the assault on *Chan Chin Ming.*

Having come to the conclusion that *Chan Chin Ming* was wrongly decided by the majority in that case, are we entitled to depart from it? We think we are. *Chan Chin Ming* was decided before the establishment of this court. It was decided at a point of time when the High Court had original jurisdiction over personal injury and fatal accident claims. Appeals were preferred to the Supreme Court which stood at the apex of the judicature. That is not the case today. All personal injury and fatal accident claims are now solely within the jurisdiction of the Subordinate Courts. Appeals are to the High Court and finally to this court. We therefore now stand at the apex in respect of these claims.

If a decision – and more so as here a majority decision – of the former Supreme Court is obviously wrong, then it is our plain duty to say so. It will, with respect, be an abdication of our solemn duty to simply fold our arms in abject submission and permit an erroneous statement of the law to continue to form part of our jurisprudence especially when it results in an injustice to a litigant. We draw support of the view we take of the matter from the fairly recent case of *Great Peace Shipping v. Tsalvliris (International) Ltd* [2002] 4 All ER 689 where the English Court of Appeal declined to follow its earlier decision in *Solle v. Butcher* [1949] 2 All ER 1107 on the issue of the existence of a jurisdiction in equity to grant rescission of a contract untainted by common mistake at common law. It is of importance to note that the parameters of binding precedent laid down in *Young v. Bristol Aeroplane Co Ltd* [1944] 2 All ER 293 did not prevent the court in Great Peace Shipping from departing from its earlier decision. The cases before us are much stronger in the sense that the majority in *Chan Chin Ming* literally re-wrote the statute that was before them merely for interpretation.

With that we now turn to address each of the two appeals before us on their respective facts.

In *Ibrahim bin Ismail v. Hasnah bt Puteh* (Civil Appeal No A-04-15-1999), there is an appeal and a cross appeal. The appeal is by the defendant in the Subordinate Court. It is directed against the failure by the trial and intermediate appellate courts to reduce the damages for bereavement despite a finding of contributory negligence against the deceased. It is trite that the effect of a finding of contributory negligence is to entitle a defendant to a proportionate reduction of the damages awarded to a plaintiff. The courts below were therefore plainly wrong. The appeal is irresistible. Counsel for the respondent (plaintiff at first instance) did not resist it. We therefore allowed it. The plaintiff's cross appeal relates to the *Chan Chin Ming* point. The trial court applied the multiplier of 16 years prescribed by s. 7(3)(iv)(d). On appeal by the defendant the High Court reversed and reduced the multiplier. The plaintiff now seeks a restoration of the original award.

In our judgment, for the reasons given, the trial judge was quite right in what he did. We do not read the majority in *Chan Chin Ming* as saying that there must be a reduction of the multiplier in every case. All it says is that despite the imperative statutory direction it was still possible in a given case for a court to substitute a multiplier of less than 16. Therefore, with respect, there was no duty on the High Court to reverse in any event and it would not have infringed *stare decisis* if it had declined interference.

Like the appeal, the cross appeal is equally irresistible. We allowed it.

The other appeal, *Lai Wai Keet & Anor v. Looi Kwai Fong* (A-04-27-1999) concerns a personal injury claim. The Sessions Court made an award for loss of future earnings by applying the statutory multiplier set out in s. 28A(2)(d)(i). The High Court intervened and further reduced the multiplier by a further 1/3? It relied on both *Chan Chin Ming* and *Takong Tabari*. The plaintiff appealed to us. We agree with his counsel's argument that it was illegal for the High Court to make a further deduction from the imperative figure. The appeal was accordingly allowed.

By consent, we made no order as to costs in both appeals.

There is one final matter that needs to be addressed. It is settled beyond doubt that when calculating the loss of dependency under s. 7 or the loss of future earnings under s. 28A, the prescribed statutory multiplier is to be applied directly. Resort to the annuity tables previously used is no longer permissible. For, when statute prescribes a multiplier, it is to be applied directly. That was settled by the Supreme Court in *Marappan & Anor v. Siti Rahmah bte Ibrahim* [1990] 1 CLJ 32; [1990] 1 CLJ (Rep) 174. See also *Hum Peng Sin v. Lim Lai Hoon* [2001] 4 CLJ 185. There should be no doubt about it now.